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C O N F I D E N T I A L

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

-against-

No. 96-2-15056-8 SEA

AMERICAN TOBACCO CO., INC.; BROWN &
WILLIAMSON TOBACCO CORP.; LIGGETT &
MYERS, INC.; LORILLARD TOBACCO CO.,
INC.; PHILIP MORRIS, INC.; R.J.
REYNOLDS TOBACCO CO.; UNITED STATES
TOBACCO CO.; B.A.T. INDUSTRIES,
P.L.C.; HILL & KNOWLTON, INC.; THE
COUNSEL FOR TOBACCO RESEARCH-U.S.A.,
INC.; SMOKELESS TOBACCO COUNCIL,
INC.; TOBACCO INSTITUTE, INC.;
foreign corporations; and unknown
corporations; and JOHN DOE 1-100,
and JANE DOE 1-100, individuals,

Defendants.

May 20, 1997
9:00 a.m.

Deposition of JON N. ZOLER, taken by
Plaintiff, pursuant to notice, at the offices of
Winston & Strawn, Esqs., 200 Park Avenue,
New York, New York, before Gail F. Schorr, a
Certified Shorthand Reporter and Notary Public
within and for the State of New York.



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A P P E A R A N C E S:

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BY: CLYDE A. PLATT, ESQ.,
of Counsel.

WINSTON & STRAWN, ESQS.
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and the Witness

200 Park Avenue
New York, New York 10166

BY: ALAN B. HOWARD, ESQ.,
-and-
ADAM J. SCHLATNER, ESQ.,
of Counsel.

-AND-

ARNOLD & PORTER, ESQS.
777 South Figueroa Street, 44th Floor
Los Angeles, California 90017

BY: ERIC L. DOBBERTEN, ESQ.,
of Counsel.

ALSO PRESENT:

MARK PRADO, Videographer
Action Legal Video, Inc.

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2 THE VIDEOGRAPHER: This is the video
3 operator speaking, Mark Prado, of Action Legal
4 Video, 132 Nassau Street, New York, New York. We
5 are here on this day, May 20th, 1997, at the time
6 continuously recorded on the videotape, at the
7 offices of Winston & Strawn, 200 Park Avenue, New
8 York, New York, to take the videotaped deposition
9 of Jon Zoler, in the matter of State of
10 Washington versus American Tobacco Company,
11 Incorporated, et al., in the Superior Court of
12 Washington for King County, number 96-2-15056-8.

13 Will counsel please introduce
14 themselves.

15 MR. PLATT: Clyde Platt of Hagens &
16 Berman on behalf of the State of Washington.

17 MR. HOWARD: Alan Howard of Winston &
18 Strawn on behalf of defendant Philip Morris.

19 MR. SCHLATNER: Adam Schlatner from
20 Winston & Strawn on behalf of defendant Philip
21 Morris.

22 MR. DOBBERTEN: Eric Dobberteen of
23 Arnold & Porter on behalf of defendant Philip
24 Morris.

25 THE VIDEOGRAPHER: The witness may be

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sworn.

J O N N . Z O L E R ,

residing at [DELETED]

[DELETED] having been first duly sworn by
the Notary Public (Gail F. Schorr), was examined
and testified as follows:

EXAMINATION BY MR. PLATT:

Q. Mr. Zoler, can you state your name
and address for the record, please?

A. My name is Jon Zoler. I live at
[DELETED]

Q. My chief objective today is to be
clear in the questions that I ask. If I'm not
clear let me know and I'll do my best to
reformulate until we have some understanding.
The objections your attorneys make are for the
record. Unless they ask you or instruct you to
not answer, I may from time to time ask that you
answer over their objections. We can take a
break any time you want.

We'll be using documents throughout
the day, they will have numbers that were not on
them originally, that we refer to sometimes as
Bates numbers. I will in order to help you

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1 Zoler

2 locate certain text refer to both the Bates
3 number and whatever page numbers I can find that
4 were part of the document originally.

5 Have you ever been deposed before,
6 Mr. Zoler?

7 A. Yes, I have.

8 Q. How many times?

9 A. I don't remember the exact number.
10 Probably three, three or so.

11 Q. Did any of those depositions relate
12 to your work at Philip Morris?

13 A. Yes, they did.

14 Q. Did all of them relate to that work?

15 A. I'm not sure. I think they did.

16 Q. Do you recall in general what you
17 were deposed about on those occasions?

18 A. There was the Cippolone case. There
19 was a case involving Liggett & Myers I believe
20 suing Brown & Williamson when Brown & Williamson
21 entered the private label generic brand
22 cigarettes. I believe there was a deposition
23 involving an employee of Philip Morris who went
24 to Brown & Williamson. And I was also involved
25 in testimony in court when Philip Morris sued

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Zoler

Lorillard with respect to the advertising for
Triumph cigarettes.

Q. And the Cippolone case, do you
remember what the subject of your deposition was,
in general?

A. All I recall is they spent a lot of
time about my background, about my
responsibilities, about some articles that I
wrote. As I recall, I was not at Philip Morris
at the time that -- that the period of the
information under investigation was related, and,
therefore, what I knew came outside of that time.

Q. What articles, do you recall what
articles they inquired about during the course of
that deposition in the Cippolone case?

A. I believe there were three articles.
I probably don't have the precise titles. One
was entitled "Measuring the Consumer in the
1980s." Another article was "The Marketing
Researcher as Detective," and a third article was
about research as related to ad claims
substantiation.

Q. Were all of these published?

A. Yes, they were.

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1 Zoler

2 Q. Do you remember what publication the
3 measuring consumer in the 1980s article was
4 published in?

5 A. I really don't remember. The only
6 publication that I know is the claim
7 substantiation was published in the Advertising
8 Research Foundation's journal.

9 Q. Do you have a copy of the deposition
10 transcript in the Cippolone case?

11 A. Yes, I do.

12 Q. Do you have copies of the depositions
13 you gave in the other two cases that you've
14 referred to, the Liggett & Myers?

15 A. No.

16 Q. Mr. Zoler, did you prepare for this
17 deposition?

18 A. I met with counsel.

19 Q. Who did you meet with?

20 A. I met with Alan Howard, Alan, Eric
21 and several other attorneys from Arnold & Porter.

22 Q. Where did that meeting or those
23 meetings take place?

24 A. In this building.

25 Q. Did you meet on more than one

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Zoler

occasion?

A. Yes.

Q. How many times did you meet?

A. I believe three times.

Q. Do you recall the approximate amount of time you spent in each of those meetings?

A. Several hours in each meeting.

Q. During those meetings did you look at any documents?

A. They showed me some documents, yes.

DIR Q. Do you recall any of the documents that you reviewed during those meetings?

MR. HOWARD: I'm going to object at this point and instruct the witness not to answer. That invades the work product privilege.

Q. Do you remember the subject of any of those documents?

A. Yes.

MR. HOWARD: Again I think the subject matter of the documents, unless they refresh recollection, invades the work product privilege and I instruct the witness not to answer beyond yes.

Q. Are you currently performing any

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Zoler

consulting work for Philip Morris?

A. Yes.

Q. Let me back up and get something clear. Are you currently employed full time by Philip Morris?

A. No, I'm not.

Q. What sort of consulting work are you performing?

A. I am at -- for this deposition, in preparation for this deposition, being paid for my time and expenses.

Q. Is there an hourly rate for your time?

A. Yes, there is.

Q. What is that?

A. \$150 an hour.

Q. Are you being paid for your time beyond the time you spent in your three meetings that you've referred to?

A. I looked at some documents on my own, my old speeches, for example.

Q. Do you recall how many hours you spent looking at your old speeches?

A. A few hours.

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Zoler

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2 Q. Do you have any idea of what the
3 total amount of the bill for your consulting work
4 with respect to this deposition is going to be?

5 A. Four to 5,000 would be a guess.

6 Q. Do you intend to include in your bill
7 the time that you're spending here today at the
8 deposition?

9 A. If it's legally permissible to do so,
10 I will.

11 Q. Do you have any understanding about
12 whether -- strike that. Are you currently
13 employed other than with respect to this
14 consulting engagement we've just been talking
15 about?

16 A. I have a marketing research company,
17 Jon N. Zoler & Associates, and I do various
18 projects from time to time for other clients.

19 Q. When did you form Jon N. Zoler &
20 Associates?

21 A. When I left Philip Morris I believe
22 in the spring of 1989.

23 Q. Since 1989 have you performed any
24 consulting work for Philip Morris or undertaken
25 any engagements on behalf of Philip Morris other

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1 Zoler
2 than with respect to this deposition?

3 A. I have -- yes.

4 Q. Could you tell me what the nature of
5 those engagements has been?

6 A. In '89 I was involved in a field trip
7 to Asia to examine the marketing research
8 operations of the various subsidiaries that are
9 located in Asia, and I've been involved since
10 then primarily serving as a research consultant
11 to various Philip Morris law firms for doing
12 legal research.

13 Q. Which law firms have you consulted
14 with?

15 A. Hunton & Williams, Fish & Richardson,
16 Robinson, I think Robinson Silverman, plus other
17 names. I'm not quite sure I know the exact name
18 of that firm. That was not for Philip Morris,
19 though.

20 Q. What was the Robinson Silverman
21 engagement for?

22 A. It was a communication test of
23 advertising involving housing.

24 Q. Just focusing now on your work for
25 Hunton & Williams and Fish & Richardson,

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1 Zoler

2 generally what's the nature of that work?

3 A. The work involved either showing
4 advertising and obtaining communication reactions
5 from consumers for that advertising or showing
6 them packaging, and again obtaining consumer
7 responses.

8 Q. Was that work related to any specific
9 litigation matter?

10 A. I'm not sure whether it went to
11 litigation.

12 Q. Do you have any idea of how much
13 money you've made through your consulting work
14 for Philip Morris since you left the company in
15 1989?

16 A. As a guess I'd say around 30,000.

17 Q. And that's excluding the money you
18 expect to receive with respect to the engagement
19 for this deposition?

20 A. Yes.

21 Q. Mr. Zoler, do you have a college
22 degree?

23 A. Yes, I do.

24 Q. What is your degree in?

25 A. I received a Bachelor's of science in

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1 Zoler

2 industrial management from what is now known as
3 Carnegie Mellon University, in 1962, and I
4 received a Master's in industrial administration
5 from the same school in 1963.

6 Q. After you got your Master's, have you
7 continued to take any course work with any
8 institutions?

9 A. No, I haven't.

10 Q. Are the three articles that we've
11 already discussed that were the topic of one of
12 your prior depositions the only articles that
13 you've published?

14 A. Yes.

15 Q. Are you a member of any professional
16 organizations?

17 A. I have been and also am. I was a
18 member of quite a few organizations while I was
19 still with Philip Morris or the companies that
20 I've been employed by before Philip Morris, and I
21 can give you the names of those. I can also,
22 since the start of my own firm, and I'm really
23 semi-retired, I've dropped most of the
24 memberships. I'm still a member of the Marketing
25 Research Council in New York City.

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Zoler

Q. While you were employed at Philip Morris what professional organizations were you a member of?

A. I was a member of the American Marketing Association, the Copy Communications Research Council, the Conference Board Marketing Research Council, the Market Research Council of New York that I've already mentioned, and I'm sure there were others, but those were the primary ones.

Q. Were you an active member of any of those organizations?

A. Yes, I was.

Q. Which ones?

A. I should also mention I was -- the Radio and Television Research Council, I was president of that at one point. I was for the Conference Board I had been chairman of their Marketing Research Council for a period of time. I was chairman of the Association of National Advertisers Marketing Research Group.

Q. Are you fluent in any languages other than English?

A. No, I'm not.

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Zoler

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2 Q. Beginning with your first work or job
3 at Philip Morris, could you please identify the
4 positions you held at the company and the general
5 time frame that you held each of those positions
6 before the time that you left in 1989?

7 A. I joined the company I believe in
8 September 1976 and I left in March 1989, and I
9 had the same title, although the responsibilities
10 changed somewhat, which was director of marketing
11 research.

12 Q. How did your responsibilities change
13 over time?

14 A. We got involved in more activities
15 include the greater use of computers, preparation
16 of various reports, the types of -- I guess the
17 types of studies that we did.

18 Q. What types of studies were you
19 referring to?

20 A. Various kinds of consumer research
21 studies.

22 Q. What department of Philip Morris did
23 you work in as the director of marketing
24 research?

25 A. We were part of the marketing

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Zoler

department which basically reported to an executive VP of marketing and sales.

Q. Were you considered a division of the marketing department?

A. A department.

Q. A department of the marketing department?

A. Yes.

Q. What other departments were there of the marketing department, and if that changed over time?

A. Well, in an organization these things constantly change.

Q. Right.

A. There was a -- are we talking about the overall sales and marketing?

Q. I'll tell you what, why don't we just start with a broad brush and you tell me what the organization was like when you first started working there and then if you can march me through and tell me how it changed?

A. I can tell you in general terms how the organization was structured. There were various changes along the way that I do not

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1 Zoler

2 remember, but I can, again, in general terms give
3 you that pattern.

4 Q. That would be fine.

5 A. The head of this entire group, as I
6 mentioned, was either the senior VP or the
7 executive VP of marketing and sales. Most of the
8 time I reported directly to that individual.
9 Under him there was a sales department which
10 consisted of the management of the salesmen of
11 the field force and various kinds of sales
12 promotion activities. Also reporting to this
13 exec VP was a marketing department which
14 consisted of the brand managers, and under that
15 marketing department, or sometimes -- or
16 sometimes directly to him there would be the
17 advertising department and perhaps consumer
18 promotion department. But as -- this changed
19 repeatedly as the organization restructured.

20 Q. Was there generally an advertising
21 function that was part of the marketing
22 department?

23 A. Yes.

24 Q. Was there generally a marketing --
25 strike that.

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1 Zoler

2 Your subdepartment of the marketing
3 department was marketing research; is that
4 correct?

5 A. That's correct.

6 Q. Was there generally a marketing
7 research function that was part of the marketing
8 department throughout the time you were employed
9 there?

10 A. Yes.

11 Q. Did you have a staff throughout the
12 time you worked there?

13 A. Yes, I did.

14 Q. Approximately how large was it?

15 A. Again, it changed over the years, but
16 at its peak I'd say approximately 30 people.

17 Q. When was that peak?

18 A. Approximately beginning at the time
19 that I left.

20 Q. Do you recollect who your direct
21 report reported to in turn? In other words, you
22 said that most of the time you reported directly
23 to a senior VP or vice president of marketing and
24 sales?

25 A. Correct.

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Zoler

Q. Do you recall who by function that person reported to?

A. Reported directly to the president of the division.

Q. What division was that?

A. Philip Morris U.S.A.

Q. Were you located in the same office throughout the time you were employed at Philip Morris?

A. We were located -- I'm not sure what you mean by office.

Q. Well, physically did you change locations while you worked at Philip Morris?

A. The division changed locations and I moved when the division moved.

Q. What locations -- where did the division used to be and where did it go to?

A. When I -- when I first joined the company in '76 they were located I believe at 120 Park Avenue, and a number of years later they constructed their current building where they are still located which I believe is 100 Park Avenue.

Q. So throughout the time you were employed at Philip Morris you were always here in

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1 Zoler

2 New York City?

3 A. Yes, I was.

4 Q. While you were at Philip Morris, were
5 you a member of any committees, formal
6 committees?

7 A. There was a marketing committee which
8 reported or was chaired by the exec/senior VP in
9 charge of sales and marketing. I was a member of
10 that, that group.

11 Q. Functionally, and by that I mean by
12 job title, who were the other members of the
13 marketing committee?

14 A. They would have consisted of the vice
15 president or director of media, the vice
16 president of brand management, the person in
17 charge of -- director of promotions, consumer
18 promotions. There was probably somebody from the
19 financial department there who took care of our
20 budgets. The sales VP, and probably the sales
21 promotion VP. I'm probably leaving out some
22 individuals. And again, this changed over time.

23 Q. How frequently did the marketing
24 committee meet, typically?

25 A. I believe we tried to meet once a

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1 Zoler

2 week, although that was seldom achieved.

3 Q. How long were the meetings typically?

4 A. An hour, perhaps longer if there was
5 some special issue that had to be discussed.

6 Q. Was there a published agenda for most
7 of the meetings?

8 A. I don't recall that there was.

9 Q. Were there minutes of the meetings?

10 A. I do not believe there were.

11 Q. Were you a member of the U.S.
12 products committee?

13 A. No.

14 Q. Was there such a thing as a U.S.
15 products committee?

16 A. There was a products committee, but
17 I'm not sure whether it was a U.S. committee or
18 was a corporate products committee.

19 Q. Did you ever consult with that
20 committee?

21 A. I made presentations to that
22 committee.

23 Q. Do you recall the general nature of
24 your presentations?

25 A. They usually involved information

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1 Zoler

2 regarding new products.

3 Q. What sort of information?

4 A. An example would be where we had
5 introduced a product into test market and we had
6 information on how well that product was doing,
7 we might present that, that type of data.

8 Q. Other than the marketing committee,
9 is there any other committee that you recall
10 being a member of?

11 A. The various marketing research
12 directors of the different divisions, and again
13 this changed as the company purchased other
14 companies, or sold them, would meet I believe
15 once a quarter.

16 Q. Were there agendas for those
17 meetings?

18 A. Yes.

19 Q. Were there minutes of those meetings?

20 A. I don't recall.

21 Q. Was there a formal title to those
22 meetings?

23 A. Essentially I can tell you the
24 purpose of the meetings. I don't know the title.

25 Q. Was there a title for the group, I

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Zoler

should say?

A. It was probably something like the marketing research directors committee.

Q. I'm sorry, you were going to tell me what the general purpose of the meetings was?

A. The purpose of the meetings was to discuss the methodologies that were being used by the research departments of the various company's divisions, and occasionally if there were some interesting study the results and the techniques used in that study would be presented and discussed. We also provided a forum for major research suppliers to present some new research service that they were attempting to sell.

Q. When you referred to research suppliers, do you mean consulting firms?

A. A firm -- consulting firms and companies such as Nielsen or IRI or MRCA, companies like that, NPD.

Q. Other than the companies that you've just referred to, are there other research suppliers that you recall having contacts with in your employment at Philip Morris?

A. Yes.

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Zoler

Q. Could you just give me a list of those, please?

A. This is probably a very incomplete list, but we used Market Science Associates to provide an evaluation analysis of factory sales data. We used Nielsen for retail sales audits. At times we used Erhart-Babick for distribution studies. We used a number -- and I can't remember their names because they changed -- of other companies to provide retail audits for test markets. There was a firm called ICC which provided information on distributor sales purchasers. A number of companies did consumer research for us. One was Commercial Analysts. Another one was Roper. MISI, which is, I don't know, marketing science something or other, the Gallup organization.

Q. I'm sorry, how do you spell MISI?

A. M-I-S-I I believe it is. Marketing Information Systems, Inc. I believe is their full name, but -- and I'm sure there were quite a few others.

MR. PLATT: I'm sorry, could you read back his answer right before I interrupted.

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1 Zoler

2 (Requested portion of record read.)

3 Q. Do you recall where MISI was located?

4 A. They were located in Englewood
5 Cliffs, New Jersey.

6 Q. What about Commercial Analysts?

7 A. New York City.

8 Q. Do you recall what sort of consumer
9 research the different companies and
10 organizations you've identified, beginning with
11 Commercial Analysts and ending with Gallup,
12 performed for you?

13 A. It would probably be easier to talk
14 about the different kinds of consumer research we
15 did.

16 Q. That would be fine.

17 A. And attempt to tie supplier names to
18 that rather than the other way around. We did
19 product testing and that was performed often, I
20 guess most of the time by NPD that is located in
21 Long Island. There the specific division was
22 called HTR Home Testing Institute that did that
23 work. Telephone surveys were done by many
24 companies, including Commercial Analysts. Tests
25 that involved advertising or product concept

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1 Zoler

2 tests were often done by MISI, although again
3 there were other people that did that, other
4 companies that did that. Roper from time to time
5 would do a major study, a probability sample
6 study on consumer behavior and attitudes. They
7 also provided ongoing information on smoking
8 incidence and consumption by demographic group.
9 We did focus groups and there were a number of
10 suppliers. I really couldn't even tell you their
11 names.

12 Q. Is that all you can remember right
13 now?

14 A. Yes.

15 Q. Focusing on the demographic group
16 information that Roper supplied to you, did some
17 of that demographic information relate to age
18 groups?

19 A. Yes.

20 Q. What was the youngest age group that
21 Roper reported on?

22 A. 18 plus.

23 Q. Do you know how -- strike that. Do
24 you know where Roper obtained the information on
25 the 18 plus samples that it reported on?

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1 Zoler

2 A. The Roper -- the Roper studies were
3 door-to-door studies and they would begin with a
4 census tracts and maps of where people lived, and
5 they would have various sampling points across
6 the country, and would obtain quotas of so many
7 respondents per sampling point so that you had a
8 nationally representative sample.

9 I should mention further that most of
10 the work that Roper did for us in this regard was
11 really a couple of questions that had been tacked
12 onto their ongoing public opinion surveys. So we
13 basically hitchhiked onto a syndicated service
14 that he was producing throughout the year.

15 Q. Do you remember what the questions
16 were that you tacked on?

17 A. One had to do with do you
18 currently -- do you currently smoke cigarettes,
19 where there was some minimum level of cigarettes
20 which I don't remember, perhaps a -- as much as a
21 pack a day, I'm not sure, and if so, how many
22 cigarettes do you smoke.

23 Q. Other than formal committees, were
24 you a member of any working groups within the
25 marketing department?

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1 Zoler

2 A. There would be ad hoc groups where we
3 might be -- these are -- I'd say they're closer
4 to meetings as opposed to ongoing committees.
5 But, for example, if we were asked to design a
6 new sales report we would meet with the users of
7 the sales report and talk about what they would
8 want, what their objectives were, what time
9 periods they were interested in, what comparisons
10 they wanted to see. So these were not formal,
11 they were ad hoc.

12 Q. Were there R&D -- strike that. Were
13 there regularly scheduled meetings that you
14 attended as part of the marketing department or
15 an employee of the marketing department
16 throughout the time you were employed at Philip
17 Morris?

18 A. I'm sorry, can you repeat that.

19 Q. Were there regularly scheduled
20 meetings that you attended in your employment at
21 Philip Morris?

22 A. Yes.

23 Q. Not committees --

24 A. Yeah.

25 Q. -- but other sorts of meetings?

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A. Yes.

3

Q. Could you identify those, please?

4

A. Well, I attended lots of sales meetings and very often made presentations. They could be at a national level or they might be in a city or in a region. I attended meetings in Richmond where the status of new products was discussed.

10

11

Q. Were there research and development general meetings that you attended?

12

13

14

A. The meetings that I referred to where new products were discussed were the only meetings that I attended in Richmond.

15

16

Q. Other than meetings you attended in Richmond, were there R&D general meetings?

17

18

19

A. I was never part of the R&D department, so I don't know what -- what meetings they had.

20

21

22

Q. Did you attend any meetings of vice presidents and directors in Richmond, get-togethers?

23

24

25

A. It would have been -- it just would have been a dinner, for example, following an R&D meeting where we discussed the new products.

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1 Zoler

2 Q. Were there any committees that you're
3 aware of that were part of the marketing
4 organization that you weren't a member of?

5 A. I'm sure there were. I -- I couldn't
6 answer that at this point.

7 Q. Did the marketing department have a
8 mission statement?

9 A. It had various mission statements
10 which kept changing over the years depending on
11 the latest reorganization and who was now in
12 charge of the given functions.

13 Q. Did you assist in drafting or
14 deriving the mission statement for the marketing
15 department?

16 A. I probably added a phrase or two, but
17 I don't think it was much -- much beyond that.

18 Q. Did the marketing department have a
19 business plan?

20 A. Yes, it did, but again that changed
21 over the years from something formal to something
22 very sketchy.

23 Q. Did it start off when you first were
24 employed there as a formal business plan and
25 become sketchy, or the other way around?

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1 Zoler

2 A. I think it was both and it kept
3 changing.

4 Q. Okay. Did you have any
5 responsibility for drafting or giving input for
6 the business plan?

7 A. The primary responsibility that we
8 had related to sales for forecasting and the
9 sales forecasting numbers which we prepared were
10 used by a number of departments including the
11 marketing department in the development of their
12 business plans.

13 Q. Did you have any responsibility for
14 coming up with a business plan for your
15 subdepartment of the marketing department?

16 A. We never used the word business plan,
17 but we did have objectives and goals, and again,
18 the amount of detail on that changed from time to
19 time. They were often very, very specific.

20 Q. Did the marketing research department
21 have a budget?

22 A. Yes.

23 Q. Did you have any input in that
24 department's budget?

25 A. Yes, I did.

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Q. Was it your responsibility to suggest projects that the marketing research department would undertake during the course of a year?

A. Yes.

Q. Was it also your responsibility to estimate the amount of money it would take to carry out that project --

A. Yes.

Q. -- or projects you suggested? At any time while you were employed at Philip Morris, did you ever create a budget for a study of youth smoking?

A. Never.

MR. HOWARD: Objection. You want to clarify what you mean by the term youth.

Q. Did the marketing research department work closely with any other departments?

A. We worked closely with many of the departments in the company.

Q. Which departments?

A. Well, the departments we worked closest with were part of this sales/marketing division, so we worked very closely with the sales department and the field force. We worked

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2 closely with their sales promotion arm, with the
3 brand management group, to a lesser extent with
4 consumer promotion groups. We worked with the
5 finance department, with Richmond, the product
6 development group.

7 Q. Did you work with the advertising
8 group at all?

9 A. Yes.

10 Q. Did you work closely with them?

11 A. Yes. I should mention that the
12 advertising function really had two parts, and
13 the brand management group was responsible for
14 the advertising campaigns, and the media
15 department would be responsible for the selection
16 and the approval of the advertising dollars that
17 would be spent.

18 Q. As part of your employment at Philip
19 Morris, did you have any contact with any
20 advertising agencies?

21 A. Yes, I did.

22 Q. Which advertising agencies?

23 A. Again, this changed over time. The
24 largest advertising agency in terms of brands
25 that they represented for Philip Morris is Leo

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Burnett. At one point Wells Rich Green was a very important agency. There were Backer Spielvogel Bates, whatever their name is, had one or two brands, and there were other agencies that might have come in for specific assignments.

Q. Do you remember having contacts with any particular individuals at Leo Burnett?

A. My primary contacts with all the agencies were the people on the -- their respective marketing research departments. I would have had a lot of contact with the research directors themselves, and the people that reported to me would have worked closely with their counterparts in the agencies' marketing research departments.

Q. Do you remember any individuals in the marketing and research department at Leo Burnett that you had contacts with?

A. Wells Rich Green, Murray Hysen, who was the research director. George Fabian was at Bates, Backer Spielvogel Bates. Cal Gage was one of the research directors at Leo Burnett. There were others which unfortunately I can't -- can't recall.

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Q. Did you have any contacts with anyone employed by the Tobacco Research Institute?

A. No.

Q. Did you have contacts with anyone employed by biological research facilities at Koln, Germany, known as INBIFO?

A. I've never heard of them.

Q. You've mentioned a couple of times today that you had contacts with other divisions of Philip Morris. What other divisions did you have interplay with?

A. As I said, the various divisions were purchased and or deaccessioned, whatever the term is. One was Seven Up, another division was Miller Beer, the International Tobacco Division. Then we acquired General Foods and that had a couple of divisions which changed because of their reorganizations, but there were the people representing like Maxwell House or Post Cereal or Oscar Meyer.

Q. Where were the offices of the International Tobacco Division located?

A. They were -- again, I'm not completely familiar with their operation.

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2 Certain years they were in the same building in
3 New York that we were. At other times I believe
4 they may have been in White Plains, and I really
5 don't know enough about them to know exactly
6 when.

7 MR. HOWARD: Whenever is convenient
8 to take a break, counsel.

9 MR. PLATT: This is fine now.

10 MR. HOWARD: Now.

11 THE VIDEOGRAPHER: It is 10:04. We
12 are off the record.

13 (A recess was taken.)

14 THE VIDEOGRAPHER: It is 10:15. We
15 are on the record.

16 Q. Mr. Zoler, were you acquainted with a
17 Mr. Myron Johnston when you worked at Philip
18 Morris?

19 A. Yes.

20 Q. How long did you work with
21 Mr. Johnston?

22 A. Mr. Johnson was there before I joined
23 Philip Morris and was there after I left Philip
24 Morris, so it was really the entire time that I
25 was there.

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Q. What department was Mr. Johnston employed in?

A. Mr. Johnson was in the department whose name I may not totally know, but basically they were involved in consumer research as it applied to issues involving the research and development department.

Q. Do you have any recollection of the title of that department?

A. No.

Q. Where was that department located?

A. It was located in Richmond.

Q. Do you recall Mr. Johnston's job title?

A. He was manager of something. I don't -- I really don't know, and probably his title changed over the years too.

Q. You said that he was involved in consumer research as it applied to issues involving the research and development department. What sort of issues?

A. Again, I don't know what his total responsibilities were because he was in Richmond and we were in New York. I know one area that he

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1 Zoler

2 spent a lot of time with and that was in product
3 testing.

4 Q. What do you mean by product testing?

5 A. A product test is basically you
6 provide smokers with a cigarette and you get
7 their evaluations on that cigarette.

8 Q. Do you know who Mr. Johnston reported
9 to at any time during your employment at Philip
10 Morris?

11 A. One person he reported to was Harry
12 Daniel.

13 Q. What was Mr. Daniel's position?

14 A. He was head of this group, but as I
15 say, I don't know the title of the group.

16 Q. Was Mr. Daniel one of the managers
17 that would attend the meetings of research
18 directors?

19 A. I'm sorry, research directors where?

20 Q. You said that there was a marketing
21 research directors meetings or occasionally there
22 would be these meetings of research directors
23 from other --

24 A. Oh, the corporation?

25 Q. Yes.

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2 A. No, he did not.

3 Q. Mr. Daniel was also located in
4 Richmond; is that correct?

5 A. Yes.

6 Q. Are there any other Philip Morris
7 personnel that Mr. Johnston reported to that
8 you're aware of?

9 A. I believe one person was Colin Rowe.
10 Another person was I think Ed Gee. Carolyn Levy
11 may have been in that position, I'm not sure
12 exactly. But over the years there were -- there
13 were different people.

14 MR. PLATT: I'd like to have marked
15 as Exhibit 1 a document produced at Bates
16 1000390803 through 1000390855.

17 MR. HOWARD: This will be Zoler
18 Exhibit 1?

19 MR. PLATT: Yes.

20 (Zoler Exhibit 1 for
21 identification, document Bates numbered
22 1000390803 through 1000390855.)

23 Q. Over the course of the next few hours
24 I'm going to ask you about several documents.
25 Whenever I ask you a question you should feel

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1 Zoler

2 free to take whatever time you need to put my
3 question in context. In other words, if you need
4 time to read and familiarize yourself with
5 language around language I may be pointing out,
6 feel free to do so.

7 My first question for virtually every
8 document is going to be do you recognize the
9 document and can you identify it for the record?

10 A. First of all, I don't remember this
11 document specifically since the department either
12 issued hundreds of documents while I was there or
13 received hundreds of documents from other
14 people. I see that I was carboned on this
15 document and I am -- I'm sure I read it at the
16 time.

17 Q. You see that the report title is
18 "Young Smokers - Prevalence, Trends,
19 Implications and Related Demographic Trends"?

20 A. Yes.

21 Q. Did you receive numerous reports on
22 young smokers of the same general nature as
23 what's been marked as Zoler Exhibit number 1?

24 A. I have to read the document before I
25 can answer your question.

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2 Q. Take whatever time you need to review
3 this and after doing so tell me whether,
4 generally whether this was the sort of document
5 that you received about young smokers on more
6 than one occasion, or whether it was unusual for
7 you to get this information.

8 MR. HOWARD: Do you mind if we go off
9 the videotape while Mr. Zoler reads this?

10 MR. PLATT: No, that's fine. We can
11 go off while you read it.

12 THE VIDEOGRAPHER: It is 10:22. We
13 are off the record.

14 (Discussion off the record.)

15 THE VIDEOGRAPHER: It is 10:28. We
16 are on the record.

17 Q. When I was asking you whether you
18 recognize the document you said that basically,
19 and I don't want to misstate the record, but my
20 impression was that you said you got a lot of
21 documents and you didn't --

22 A. Correct.

23 Q. And you didn't necessarily remember
24 this one specifically?

25 A. Correct.

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Q. My general question is focusing on the topic of this report, "Young Smokers - Prevalence, Trends, Implications and Related Demographic Trends," did you get a lot of information about young smokers in the course of your employment at Philip Morris or was it unusual for you to get this sort of information?

A. First of all, I'd like -- like to say that there's a major distinction on the data sources that we used or saw. For example, my responsibility was conducting research for the marketing research department for Philip Morris U.S.A., and that is there were many research studies and this is research that we paid for, commissioned and paid for and then analyzed. The research that we conducted, and it was the policy of the department to only speak to people 18 plus. So if there is a reference to young smokers in the marketing research department's reports, we are talking 18 plus. It could be 18 to 24, it could be 18 to 34 depending on the specific nature of the -- of the program: To the best of my knowledge, that was the policy that we followed and enforced in all the research that we

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did.

This document was done by Myron who worked in the research and development area in Richmond. My understanding is that all the data in here that relates to people under 18 was research that had been conducted and probably paid for either by the government or some kind of educational institution. So Myron was not responsible for either commissioning these studies, conducting the studies or in fact even collecting the data. What he did in here was to take information that had already been published or available and report on what he -- what he saw, and he also report -- reported on what he felt his opinions were about the implications of these data.

So I think it's very important to establish this dichotomy between Philip Morris U.S.A. commissioned information and publicly-available information.

Q. As I understand it, what you've just said is this is not a report where we using our standard practice went out and interviewed people on our own, this is just a review of data

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1 Zoler

2 compiled from other sources, including government
3 sources and educational institution sources?

4 A. Yes.

5 Q. Do you know who assigned Mr. Johnston
6 the task of reviewing and reporting on that
7 information concerning smokers who were of a
8 younger age than 18?

9 A. Let me try to answer that a couple of
10 ways. One is that I really don't know in any
11 kind of specific way who asked Myron to do this,
12 because he reported through an organizational
13 hierarchy that was totally independent than the
14 one that I reported to.

15 On a more general basis, Myron and
16 part of that group I would almost classify as a
17 think tank, where they had general
18 responsibilities, again, I don't know the
19 specific nature, I have no idea what their
20 charter was, I have no idea what their objectives
21 were, but to essentially look out into the
22 environment and see what was happening.

23 To the best of my knowledge, for this
24 activity they had no budget to pay for any
25 research, and so they were taking advantage of

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2 what others, especially the government and these
3 kinds of institutions, were doing.

4 Q. If you look at the second page of the
5 document, the one that has the ending Bates
6 numbers 804.

7 A. I'm sorry, I don't know where you
8 are. Oh, okay. Fine.

9 Q. Is this a form that you're familiar
10 with?

11 A. Yes.

12 Q. It refers to a research center of
13 Philip Morris U.S.A. Where was that research
14 center?

15 A. That is what I was calling the
16 research and development, the R&D center. It
17 was -- it was located in Richmond and it was in a
18 building next to the factory in Richmond.

19 Q. Do you know what the purpose of that
20 research center is?

21 A. As I said, again, I was not in that
22 hierarchy. I can tell you in general terms my
23 understanding is their primary purpose was to
24 develop new products and aid manufacturing in
25 coming up with more efficient ways to make

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cigarettes.

Q. Was Mr. Johnston employed at the research center?

A. Yes, he was in that building.

Q. Which Department of Philip Morris was in charge of the research center?

A. The research center was part of the, what you would call the -- I guess it was called the operations department. The operations department was headed generally by an executive VP in New York, and reporting to that exec VP -- and again, this changed from year to year and depending on the organization structure -- but in general it had an R&D arm which is -- and this research center was that R&D arm, I don't know if there were researchers, all of them were in that building or another, I don't know, but basically as far as I -- as far as I know, this is the R&D group, and there was a manufacturing group, and at one point in time there was a separate leaf purchasing group, and these -- these reported to the exec VP of operations.

Q. Did the executive vice president of operations in New York report directly to the

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1 Zoler
2 president of Philip Morris U.S.A.?

3 A. Yes.

4 Q. Did you use the cover form that we're
5 looking at here at Page 804 for any of the
6 reports that you wrote?

7 A. Each -- each department really had
8 their own cover forms and their own distribution
9 lists and etcetera.

10 Q. Did you have a cover form that was
11 similar to this one for the marketing research
12 department?

13 A. No.

14 Q. Do you see the accession number in
15 the upper right-hand corner of the cover page?

16 A. Yes.

17 Q. Do you have any understanding of the
18 significance of that particular number?

19 A. I could guess.

20 Q. I don't need you to guess. You don't
21 know what that is?

22 A. No.

23 Q. Do you know whether there was a
24 library of reports that were filed according to
25 the information compiled on the cover sheet?

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1 A. I would assume so.

2 Q. Do you see the keyword list at the
3 bottom of that cover page?

4 A. Yes.

5 Q. Do you know who developed the keyword
6 list?

7 A. No.

8 Q. Do you know whether there was a
9 master list of keywords relating to reports
10 produced by the research center?

11 A. No.

12 Q. Do you know whether there were other
13 reports that you could access by using the
14 keywords that are -- a couple of the keywords
15 listed here, youth and young smokers?

16 A. I personally never -- never used the
17 system or the keywords to access, so I really
18 don't know.

19 Q. Do you know whether there was a
20 system of access that allowed people to use
21 keywords to retrieve information?

22 A. I do not know definitively. I would
23 assume there was if they did this.

24 Q. If you turn to the next page, Bates
25

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805. Do you know who Dr. Robert B. Seligman, the addressee of the report, is?

A. Robert Seligman at the time was the head of the research and development department or division, whatever their organizational title was.

Q. Do you know what Dr. Seligman's degree was in?

A. I know nothing about Dr. Seligman's background.

Q. Did Dr. Seligman report to the executive vice president of operations?

A. To the best of my knowledge he did.

Q. If you look at the carbon copies which are listed both on the distribution or the -- excuse me, the cover page, Bates 804, and are listed as carbon copies at Page 806, and I'll focus on the ones on 804 right now. Who was Mr. R. Thomson?

A. He was a director of something, and I believe that Harry Daniel reported to him at the time.

Q. What was Mr. Daniel's position?

A. He was manager of this consumer group

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1 Zoler

2 that had Myron Johnson in it.

3 Q. Well let me try and -- at the time of
4 this report, did Mr. Johnston report to
5 Mr. Daniel who in turn reported to Mr. Thomson
6 who in turn reported to Mr. Seligman, or
7 Dr. Seligman?

8 A. I believe that is the case.

9 Q. Who was Dr. Levy?

10 A. Carolyn Levy was in the department at
11 this time. I do not know what her relationship
12 was to either Myron Johnson or to Harry Daniel.

13 Q. Do you know what her degree was in?

14 A. No.

15 Q. Do you recall who Mr. L. Meyer or
16 Meyer was?

17 A. Mr. Meyer, it's Meyer in fact, was in
18 charge of developing new products at the time.

19 Q. Was he also an employee at the
20 research center?

21 A. Yes.

22 Q. Who is Mr. T. Goodale?

23 A. That's Tom Goodale, and he was an
24 assistant to the executive VP of operations in
25 New York.

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1 Zoler

2 Q. Do you know of anyone who's not
3 listed on this cover page, Bates 804 or in the
4 carbon copies at 806, who received this report?

5 A. I have no idea.

6 Q. Do you know why Mr. Johnston was
7 interested in teenage smoking?

8 A. We in general were interested in
9 developing highly reliable sales forecasts, and
10 different departments at Philip Morris, including
11 marketing research department, including business
12 planning and including the operations group, were
13 all developing the best forecasts we could
14 come -- come up with on industry sales and in
15 particular our brand sales.

16 Q. If you look at Bates 808, under the
17 heading "Summary," it says "It is important to
18 know as much as possible about teenage smoking
19 patterns and attitudes. Today's teenager is
20 tomorrow's potential regular customer and the
21 overwhelming majority of smokers first begin to
22 smoke while still in their teens." Would you
23 agree that is one ground for Philip Morris to be
24 interested in teenage smoking?

25 MR. HOWARD: Objection. I think

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that's compound.

A. As I said, the -- to the best of my knowledge, the reason that this information is developed was really for forecasting, sales forecasting purposes. I personally do not remember any of the numbers in here, and as I said before, what my department did was studies of those 18 plus, and the reason was that I didn't rely -- I don't think this data is useful. I believe that people when they're 18 start making choices that are important and we can and should be tracking, again on a very general basis. All I remember about this kind of data is that it kept changing.

Q. Do you recall ever forwarding any data on teenage smoking to the business planning department for the purpose of developing forecasts?

A. I believe that I did forward documents such as this. I don't know whether I forwarded this specific document, but I believe that I did, yes.

Q. Did you include or have any communications with the business planning

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1 Zoler

2 department to tell them that you didn't think
3 that the data was reliable?

4 A. I assume that we would discuss our
5 forecasts. As I said, each group prepared
6 independent forecasts. We believed in the
7 forecasts that we were making. We did not use
8 people under 18 for our forecasts. Business
9 planning made their independent forecasts. I
10 honestly don't know what they used, and from what
11 I see here, again, I did not see the numbers.
12 Operations undoubtedly did their own forecasting.

13 Q. Do you recall anything that you did
14 with the report? In other words, did you
15 distribute it to other people?

16 A. I believe I distributed reports like
17 this to other people, yes. I don't know whether
18 I distributed this specific report.

19 Q. Do you know whether you distributed
20 the report to your immediate superior, the
21 executive vice president of marketing?

22 A. As I say, I don't know about this
23 specific report. It is highly likely that I did.

24 Q. Do you know whether this report was
25 ever, or a copy of this report was ever given to

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1 Zoler

2 the president of Philip Morris U.S.A.?

3 A. I have no way of knowing that.

4 Q. Before Mr. Johnston wrote this
5 report, had you ever spoken with him about
6 teenage smoking?

7 A. I -- I probably did because I knew he
8 was doing studies like this.

9 Q. How did you know that he was doing
10 studies like that?

11 A. He either mentioned it to me or I had
12 seen studies prior to this one. I can't recall.

13 Q. Did you ever discuss the
14 methodologies that he was using in performing
15 these studies?

16 A. Being a researcher I probably did.

17 Q. Did you ever make any suggestions to
18 him for ways to improve the studies that they was
19 performing?

20 A. I might have.

21 Q. Do you recall ever writing anything
22 relative to this study where you disagreed with
23 any of Mr. Johnston's conclusions or opinions?

24 A. Let me -- let me try to put this
25 tactfully. Mr. Johnson is a respected

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researcher. He did not report to the marketing research department. As I said before, he and his area were a think tank. I think that it was their and is their obligation to think about different issues and present data that they come across. I never wrote, as far as I know, any memo that said please disregard this. On the other hand, we didn't use it. I think the value of this kind of information was very general, saying that the market, the industry which we were, as I said, primarily interested in forecasting, will get weaker in the future or will stay the same or will get stronger, and for the research, marketing research department purposes that was fine.

The -- I don't know what the numbers are, but I would guess that smokers 18 plus account for 90 some percent or more of sales of the industry. We focused our budget and our resources on getting a tight fix on what this 90 percent of smokers, who were legal -- legal age smokers, would be doing. It didn't -- I did not think anything under that had any value, under 18 years old had any value whatever.

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1 Zoler

2 Q. You didn't think that information
3 about the number of smokers who were 18 plus who
4 started to smoke before they were 18 had any
5 value?

6 A. The -- again, we knew what those 18
7 plus were doing. We knew what people five years
8 ago that were 18 plus were doing. We could
9 always project that information. We certainly
10 didn't need this information.

11 Q. Did you ever tell Mr. Johnston you
12 didn't need this information, it was kind of a
13 waste of time for him to be compiling it?

14 A. I -- you know, as I said, they were
15 an independent think tank. They expressed the
16 opinions that they felt. They were
17 intellectually honest. I liked to talk to Myron
18 when I could about issues. There was no reason
19 to say that to him.

20 MR. PLATT: Let me have marked as
21 Exhibit number 2 a memorandum by Mr. Johnston,
22 addressed to Mr. Zoler, on the subject of trends
23 and smoking among high school seniors, dated
24 August 15th, 1985, which was reproduced under a
25 cover memo written by Mr. Zoler to Mr. W.

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1 Zoler

2 Campbell and Mr. F. Resnik on September 16th,
3 1985. The documents are at Bates 2040282065
4 through 2040282092.

5 (Zoler Exhibit 2 for
6 identification, cover memo, by Mr. Zoler, to
7 Mr. W. Campbell and Mr. F. Resnik dated September
8 16th, 1985, with attached memorandum by
9 Mr. Johnston, to Mr. Zoler, subject: Trends and
10 smoking among high school seniors, dated August
11 15th, 1985, Bates numbered 2040282065 through
12 2040282092.)

13 MR. HOWARD: Again, do you want to go
14 off the record to give the witness time to review
15 this document?

16 MR. PLATT: That's fine. Yes, let's
17 do that. Take whatever time you need and review
18 the report.

19 THE VIDEOGRAPHER: It is 10:55. We
20 are off the record.

21 (Discussion off the record.)

22 THE VIDEOGRAPHER: It is 11:04. We
23 are on the record.

24 Q. Mr. Zoler, did you draft the
25 memorandum that appears as the first page to

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1 Zoler

2 Zoler Exhibit 2 on or about September 6th, 1985
3 in your capacity as the director of marketing
4 research?

5 A. Yes, I did.

6 Q. Who are the gentleman that you
7 address the memo to?

8 A. W.I. Campbell was Bill Campbell who
9 at that time was exec VP of marketing and sales.
10 F.E. Resnik was Frank Resnik, who was president
11 of the Philip Morris U.S.A. division at that
12 time.

13 Q. You sent it to your immediate
14 superior and the head of the division on or about
15 September 6th, 1985; is that correct?

16 A. Yes, I did.

17 Q. Why did you write -- strike that.
18 Why did you believe that Mr. Johnston's memo on
19 smoking trends among high school and college
20 students was an important memo?

21 A. Well, as I said in the memo here, it
22 was the most comprehensive study that I had seen
23 on the subject.

24 Q. Did you have any conversations with
25 Mr. Campbell or Mr. Resnik to tell them that you

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1 Zoler

2 thought that the information included in
3 Mr. Johnston's report was unreliable?

4 A. I cannot recall what I said. This is
5 12 years ago.

6 Q. You wrote that information from
7 Mr. Johnston's report was going to be provided to
8 the business planning department for use in their
9 forecasting model to project industry sales. How
10 did you know that that was how the business
11 planning department would use the data?

12 A. I had had conversations from time to
13 time with them about their forecasting model, and
14 I knew that it was based on demographics
15 including population, U.S. census population
16 numbers, incidence of smoking numbers,
17 consumption numbers by demographic group, and
18 this was additional information that feed into
19 their model.

20 Q. Did their model include any
21 information about people who were younger than 18
22 years old?

23 A. I don't know.

24 Q. Did you ever see a copy of their
25 model?

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2 A. No. It was a mathematical model and
3 quite honestly, it was -- they felt it was
4 proprietary.

5 Q. When you say they felt it was
6 proprietary, do you know whether their model was
7 or their projections were designated confidential
8 within the company in a way that you couldn't
9 access the information?

10 A. Generally, the -- what I would get
11 from them, and they would get from our
12 department, would be numbers as to what we felt
13 the industry sales would be year by year, and
14 then at that time we would discuss why their
15 number was, say, one percent or higher, one
16 percent lower than our numbers, what assumptions
17 we made. So the -- without getting into the
18 mathematics of how their model worked or how our
19 models would work, we in general talked about why
20 we agreed with each other or why we were
21 different.

22 Q. Did you in fact forward
23 Mr. Johnston's report or provide it to anyone in
24 the planning, business planning department as you
25 indicated in the cover memo?

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MANHATTAN REPORTING CORP.

1 Zoler

2 A. Yes. One of the carbonees is L.
3 Wexler, who is Larry Wexler, and at that time he
4 was in charge of the business planning
5 department, at least the forecasting aspect part
6 of it.

7 Q. Did you have any conversations with
8 Mr. Wexler about the information?

9 A. I can't remember.

10 Q. Okay. Do you recall ever telling
11 Mr. Wexler that any of the information was
12 unreliable?

13 A. Mr. Wexler knew -- I'm sorry.
14 Mr. Wexler knew that we only used people 18
15 plus. So he could reach his own conclusions
16 whether we felt it was important or not.

17 MR. PLATT: Could you read the last
18 answer, please.

19 (Requested portion of record read.)

20 Q. Did you have any understanding about
21 whether Mr. Wexler intended to only use
22 information in the report about people who were
23 18 and over?

24 A. I really don't know what Mr. Wexler
25 did.

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Zoler

1
2 Q. Did you provide this information to
3 anyone other than the addressees and the carbon
4 copies?

5 A. Not to my knowledge.

6 Q. Did you ever have any conversations
7 with Mr. Campbell or Mr. Resnik about the
8 information?

9 A. I really can't remember.

10 Q. Did anyone in the marketing
11 department that worked for you use the
12 information?

13 A. I don't know.

14 Q. If you look at Page -- well, the page
15 ending with Bates numbers 073, which is Page 8 of
16 the text of Mr. Johnston's report, there is a
17 fairly long list of carbon copies. Do you know
18 who Mr. Claflin is?

19 A. Someone who worked in the R&D
20 department.

21 Q. Same question for Mr. Daylor?

22 A. Same answer.

23 Q. Okay. Let me go through it this
24 way. Are there any people on the carbon copy
25 list here who worked in departments other than

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1 Zoler

2 the R&D department?

3 A. Well, Tom Goodale who I mentioned
4 before was in the operations department, but the
5 R&D was part of operations. Karen Miller worked
6 for me. Barry O'Brien may have worked for me at
7 that time, I'm not sure.

8 Q. You see that the last listing on the
9 carbon copy -- in the carbon copy group is the
10 central file. Do you know whether that's a
11 central file that was maintained at the research
12 department as part of the R&D function?

13 A. I assume it is.

14 MR. HOWARD: By the way, I just want
15 to note for the record that Zoler Exhibit 2, at
16 least the portion beginning on Page 2 of Zoler
17 Exhibit 2, the August 15, 1985 memorandum, from
18 Myron Johnston does indicate a confidential stamp
19 in the Texas case, and it indicates that there's
20 some confidential information in that document,
21 and to the extent the document would be part of
22 the record of this transcript under the
23 confidentiality order in Washington I'd ask that
24 the transcript be designated confidential.

25 Q. Who's job was it at Philip Morris to

1 Zoler

2 ensure that the company knew as much as possible
3 about teenage smoking patterns and attitudes?

4 MR. HOWARD: Objection; lack of
5 foundation. You can answer if able.

6 THE WITNESS: I'm sorry, what?

7 MR. HOWARD: I objected to the lack
8 of foundation for the record, but you may answer
9 if able.

10 A. I really do not know how important
11 anyone believed such information to be. The only
12 person that regularly reported on the public
13 information that was available on this issue, to
14 the best of my knowledge, was Myron Johnston.

15 Q. Do you know of anyone else at Philip
16 Morris who also -- strike that. Do you know
17 anyone at Philip Morris who assisted Mr. Johnston
18 in looking at that publicly-available
19 information?

20 A. I don't know.

21 Q. If you go back to Zoler Exhibit
22 number 1, do you see Bates 805 which is the first
23 page of text, trend number 5 refers to a national
24 panel? Do you have any understanding what that
25 national panel was?

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1 Zoler

2 A. As I mentioned before, one of Myron's
3 primary responsibilities was to provide
4 information on product tests that the R&D
5 department conducted routinely and frequently.
6 The way they selected the sample for these
7 product tests was from their own national panel
8 of smokers. Part of the classification data that
9 they got from this panel included not only the
10 brand that the people normally smoked, but also
11 the number of cigarettes they smoked per day, and
12 I believe that is what he is referring to here.

13 Q. Looking at the trends that are
14 identified on this first page, at the time he
15 wrote this in March of 1981 did you disagree with
16 the accuracy of his view of those trends?

17 A. I really can't say which of these
18 trends I agreed with or disagreed with then or
19 even now. They, again, I'm repeating this, they
20 were a totally independent group. We felt that
21 we had the resources and the manpower to evaluate
22 the information which we had commissioned and
23 would evaluate and come up with our own analysis
24 of what we felt the trends were.

25 Q. At Bates 806, which is Page 2,

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1 Zoler

2 Mr. Johnston wrote that "It is inevitable,
3 therefore, that industry sales will begin to
4 decline within the next few years." Did you
5 discuss that conclusion with anyone?

6 A. Let me answer that in a couple of
7 parts. One is I really don't remember about the
8 specific point. Two, and more importantly, we
9 had our own forecasts which will either agree
10 with or disagree with this conclusion, and I have
11 confidence in our own forecasts.

12 Q. Do you recall whether your own
13 forecasts predicted that industry sales would
14 begin to decline within the next few years as of
15 1981?

16 A. Again, it's a virtually impossible
17 question to answer except in the most general
18 sense, that industry sales while I was there were
19 declining very slightly in, as I recall,
20 virtually every year. There were some years
21 where they seemed to be declining a little more
22 than in other years.

23 Q. Do you recall whether your forecasts
24 were for continued declines?

25 A. I do not remember the specific nature

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MANHATTAN REPORTING CORP.

Zoler

of the forecasts or the exact numbers.

Q. If you look at Bates 829, which is Page 22 of the memorandum.

A. I'm sorry, what number?

Q. The ending number is 829.

A. 829.

Q. Looking over Mr. Johnston's plans, do you remember discussing any of those plans with him?

A. No.

Q. You see his third plan is to "summarize the results of journal articles on psychological and behavioral correlates of teenage cigarette smoking." Do you know whether he ever did that?

A. No.

Q. His fourth plan was to "Recruit additional young panelists for the national panel and then to conduct a psychographic study of 18 to 21 year old smokers and nonsmokers using the Edwards Personal Preference Inventory." Do you know whether he ever did that?

A. I know nothing about this.

Q. Do you know what the Edwards Personal

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Zoler

Preference Inventory is?

A. In a general sense, but I've never used it.

Q. If you look at Page 831, Mr. Johnston wrote under the heading "Description of data sources," "In the past we have had to make due with data on teenage cigarette smoking from small samples using techniques that were frequently questionable." Do you have any understanding of what Mr. Johnston meant when he referred to the frequently questionable techniques?

A. No.

Q. Do you know whether anyone else within the Philip Morris organization used the report we've been looking at that has been marked Zoler number 1 in carrying out the company's business?

A. I don't have any idea.

MR. PLATT: Let me have marked as Exhibit number 3 a memorandum dated February 22nd, 1979, from Mr. Johnston to Mr. Zoler. It's been produced at Bates WA 10007660 -- excuse me, 888.

(Zoler Exhibit 3 for

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1 Zoler

2 identification, memorandum, from Mr. Johnston to
3 Mr. Zoler, dated February 22nd, 1979, Bates
4 numbered WA 1000766888.)

5 Q. Is this a memorandum that you
6 received as the director of marketing research on
7 or about February 22nd, 1979?

8 A. Based on what it says it is.

9 Q. Who was Dr. A. Udow?

10 A. Al Udow reported to me.

11 Q. Excuse me?

12 A. Dr. A. Udow reported to me.

13 Q. What was his position at the time of
14 the memorandum?

15 A. He was manager of some aspect of
16 consumer research studies.

17 Q. Do you know why Mr. Johnston was
18 forwarding information to Mr. Udow concerning the
19 incidence of teenage smoking?

20 A. No.

21 Q. Did you ever speak to Dr. Udow
22 concerning the incidence of teenage smoking?

23 A. I have -- I really cannot say. As I
24 said, the policy of the department was to only
25 conduct studies among people 18 plus.

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1 Zoler

2 Q. But was it also the policy of the
3 department to use whatever information it could
4 gather concerning smoking of people who were
5 younger than 18?

6 A. Just based on what I read here, and
7 as I said I have absolutely no recollections of
8 the incident or this memo, someone may have asked
9 us a number and so we were trying to find a
10 number.

11 Q. I just want to be very clear. Was
12 there a policy in your department against the use
13 of information concerning people who were under
14 18 and who smoked?

15 A. Would you please repeat that.

16 Q. Yes. Was there a policy in your
17 department that prohibited the use of information
18 about people younger than 18 who smoked?

19 A. If -- first of all, the
20 information -- if information were public we used
21 it.

22 THE VIDEOGRAPHER: Excuse me, can we
23 pause to change tapes, please?

24 MR. PLATT: Yes.

25 THE VIDEOGRAPHER: It is 11:28. This

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MANHATTAN REPORTING CORP.

1 Zoler
2 is the end of tape 1 of the deposition of Jon
3 Zoler. We are off the record.

4 Today is May 20th, 1997. This is the
5 beginning of tape 2 of the deposition of Jon
6 Zoler. It is 11:29. We are on the record.

7 Q. Do you remember what Dr. Udow's area
8 of expertise was, what his degree was in?

9 A. No.

10 Q. Who is -- is it Dr. Pagan that's
11 listed as a carbon copy on Exhibit 3?

12 A. I don't recall the name.

13 MR. PLATT: I'd like to have marked
14 as Zoler Exhibit number 4 a memorandum dated
15 November 10th, 1977, from N. Holbert,
16 H-o-l-b-e-r-t, to Mr. Zoler. It's been produced
17 at Bates 2041761868 through 2041761871.

18 (Zoler Exhibit 4 for
19 identification, memorandum, from N. Holbert, to
20 Mr. Zoler, dated November 10th, 1977, Bates
21 numbered 2041761868 through 2041761871.)

22 Q. Take whatever time you need to review
23 this and tell me whether it's a memorandum that
24 you received as the director of market research
25 on or about the date on the memorandum, November

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MANHATTAN REPORTING CORP.

Zoler

10th, 1977?

A. I'm unable to read this second page. Perhaps you have a better copy.

Q. I'm afraid not. This is how it was produced to us. Just looking at the first page, the cover page, do you know whether you got this memo?

A. I would assume I did get the memo.

Q. Who was Mr. Holbert?

A. Neil Holbert was manager of I guess primarily the tracking study research we did in the department.

Q. Did Mr. Holbert use the table of teenage incidence data that he's listed being part of this memo in performing his work?

A. He reported, from -- from, again, the gist of this memo, he reported on the information that he had seen.

Q. Did your department make use of this information?

A. We reported on this information. We did not collect it. And to the best of my knowledge, we never used it.

Q. Do you know whether this information

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1 Zoler
2 was forwarded to anyone other than the carbon
3 copies?

4 A. I don't know.

5 Q. Who was J. Isaacs?

6 A. He was a member of the marketing
7 research department and he may at that time have
8 been reporting to Neil Holbert, I don't know.

9 Q. Same question for D. Mazzitelli?

10 A. Dom Mazzitelli was also a member of
11 the marketing research department.

12 Q. Both of those folks were under you;
13 is that correct? They reported to you?

14 A. They -- maybe not directly, but they
15 were -- yes, ultimately they did.

16 Q. They were part of your staff?

17 A. Correct.

18 MR. PLATT: Let me have marked as
19 Zoler Exhibit 5 a memorandum dated January 19th,
20 1983, from Mr. Johnston to Mr. Zoler with
21 attachments. It's at Bates 2041761861 through
22 2041761867.

23 (Zoler Exhibit 5 for
24 identification, memorandum, from Mr. Johnston to
25 Mr. Zoler, with attachments, dated January 19th,

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1 Zoler

2 1983, Bates numbered 2041761861 through
3 2041761867.)

4 Q. Is this a memorandum that you
5 received on or about January 19th, 1983 as
6 director of marketing research?

7 A. Based on what it says, I did.

8 Q. The memorandum refers to a
9 conversation in which you questioned whether
10 people who hadn't started smoking by age 18 were
11 unlikely to ever become smokers. Do you remember
12 what led you to question whether the conventional
13 wisdom referred to here was correct?

14 A. No.

15 Q. Did you agree with the conclusion
16 that Mr. Johnston writes when he says 'Clearly,
17 conventional wisdom has to be rephrased to read
18 'anyone who has not become a smoker by age 25 is
19 unlikely to become a smoker' "?

20 A. I'm sorry can you repeat the
21 question.

22 Q. Do you agree or did you at the time
23 agree with Mr. Johnston's conclusion as expressed
24 by the following: 'Clearly, conventional wisdom
25 has to be rephrased to read 'anyone who has not

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MANHATTAN REPORTING CORP.

Zoler

become a smoker by age 25 is unlikely to become a smoker'?"

A. Again, I have no idea what I believed at the time. I assume that at the time I would have studied very carefully all the data that was in here. There's -- there's really no reason to question this point, nor do I think it's very important.

Q. Did you use the information in this memorandum in any way?

A. Again, we're asking for something that happened 14 years ago. As I said a number of times, we had our own sources of information and we relied on our data.

Q. As part of your information, did you ever ask people when they started smoking?

A. We may have.

Q. You don't recall whether you asked people in all the studies you did what age they were when they started smoking?

A. There probably were some studies where we did.

Q. Okay. Why were you interested in that information?

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MANHATTAN REPORTING CORP.

1 Zoler

2 A. Someone probably asked the question.

3 Q. Why would that question be of any
4 importance to you in your job as the director of
5 marketing research at Philip Morris?

6 A. It wouldn't be.

7 Q. It wouldn't be?

8 A. No.

9 Q. So you were asking questions in your
10 studies that were not important to you?

11 A. We were asking questions that
12 somebody might have asked us.

13 Q. Okay. Do you know who might have
14 asked you to include in your studies questions
15 about when it was that people started smoking?

16 A. First of all, let me say that we
17 probably did 40 to 50 studies a year, and we
18 probably were asked hundreds of questions a
19 year. There is no way that I could say who asked
20 what question when.

21 Q. Did you ever suggest questions to be
22 included in your studies?

23 A. Yes.

24 Q. Did you have any veto power of what
25 questions would be included in your studies?

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MANHATTAN REPORTING CORP.

1 Zoler

2 A. Sometimes I did, sometimes I didn't.

3 Q. Do you recall anything more
4 specifically about who might have asked you to
5 include questions about what age people were when
6 they started smoking in your studies?

7 A. No.

8 Q. Did you ever suggest that that was
9 unimportant and you really shouldn't include it
10 in the study, it was just a waste of time?

11 A. It depends who asked me to do it.

12 Q. Do you recall ever saying to anyone,
13 you know, these questions about what age people
14 were when they started smoking is useless, we
15 shouldn't have them in our studies?

16 A. I cannot recall any discussions
17 concerning that.

18 Q. I'm sorry, at Bates 0 -- strike
19 that. Sorry.

20 MR. PLATT: If we could go off the
21 record here for a minute so I can organize this
22 it might save us some time.

23 THE VIDEOGRAPHER: It is 11:41. We
24 are off the record.

25 (Discussion off the record.)

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1 Zoler

2 THE VIDEOGRAPHER: It is 11:49. We
3 are on the record.

4 MR. PLATT: I'd like to have marked
5 as Zoler Exhibit 6 a memorandum dated March 17,
6 1988, from Mr. Johnston to Mr. Zoler on the
7 subject of smoking among high school seniors, at
8 Bates 2042329558 through 2042329566.

9 (Zoler Exhibit 6 for
10 identification, memorandum, from Mr. Johnston, to
11 Mr. Zoler, subject: Smoking among high school
12 seniors, dated March 17, 1988, Bates numbered
13 2042329558 through 2042329566.)

14 Q. Mr. Zoler, is this a memorandum you
15 received from Mr. Johnston on or about March 17,
16 1988?

17 A. Based on what the memorandum says,
18 yes, I did.

19 Q. Mr. Johnston in the first paragraph
20 on the first page comments that "The best
21 predictor appears to be the one you have chosen
22 to use, smoked within the past 30 days." Take
23 whatever time you need to read the language
24 around that and tell me do you remember the
25 circumstances that led you to select the

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1 Zoler

2 predictor that Mr. Johnston refers to there?

3 A. I really don't.

4 Q. If you look at the last page of the
5 text which is Bates 561, Mr. Johnston concludes
6 the report with the statement "Now that I've had
7 a chance to look at the PHS" --

8 A. I'm sorry, where are you?

9 Q. The very last sentence of the text of
10 the report at Page 561. It says "Now that I've
11 had a chance to look at the PHS data and compare
12 the two data sources, I'm even more confident
13 than before that we can use the data on high
14 school seniors to predict trends in smoking among
15 young adults." Did you agree with that
16 conclusion?

17 A. I really don't remember anything
18 about this memo or the techniques that Myron
19 used.

20 Q. If you look at the list of carbon
21 copies, there's a Mr. Gee. Do you know what his
22 position was at the time?

23 A. At the time he may have been Myron's
24 boss.

25 Q. What about Mr. Houghton?

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A. Ken Houghton was -- I think he was the director of research and development.

Q. What about Mr. Myracle?

A. I don't know his position at that time.

Q. Mr. Nelson, do you know what his position was at the time?

A. No, I don't.

Q. Do you know what Mr. Tindall's position was at the time?

A. I believe he was a manager at roughly the same level as Myron.

Q. Did you discuss this report to anyone?

A. I don't know.

Q. Do you know whether anyone distributed it beyond the persons that are listed as having received it?

A. I don't.

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15 Q. Was there a formal document retention
16 policy for the marketing research department?

17 A. We had a formal policy. It was,
18 quite honestly, kind of sloppy, but there was a
19 policy where anyone that issued a memo to anyone,
20 one copy of it should have gone into the file.

21 Q. Was there a policy that governed how
22 long documents that were placed in the files
23 would be maintained?

24 A. There were policies which changed
25 over the years in terms of how many years, and I

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1 Zoler

2 believe they were done in conjunction with the
3 legal department as to how long they felt it was
4 necessary to keep these documents.

5 Q. Did you ever learn about any
6 litigation against Philip Morris which resulted
7 in a request for information from your
8 department?

9 A. I assume we were -- I can't recall
10 the exact specifics, but -- and I would not have
11 been involved myself. Somebody on my staff might
12 have worked with an attorney who would request
13 information from the files.

14 Q. Do you recall ever getting any
15 instructions to not destroy information
16 pertaining to given topics because they were
17 relevant to pending litigation?

18 A. I don't -- I don't remember any of
19 that.

20 Q. Did you ever participate in any
21 review of the documents in the marketing
22 department for the purpose of responding to
23 requests for information in various litigations?

24 A. As I recall, there were some cases
25 which I do not remember the details, where

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1 Zoler

2 someone asked for certain documents and we gave
3 it -- gave them to them.

4 Q. But were you personally involved in
5 the search for those documents?

6 A. I don't -- I don't remember, and I
7 really don't think so.

8 Q. I think you said earlier today that
9 you did use computers in the marketing research
10 department; is that correct?

11 A. Yes.

12 Q. Did you have a PC on your desk?

13 A. I never used it.

14 Q. So the answer is you had one but you
15 didn't use it?

16 A. I had one but I never turned it on,
17 so.

18 Q. Did other people in the marketing
19 research department have computers that they
20 used?

21 A. Yes.

22 Q. Were those computers networked in any
23 way?

24 A. Yes.

25 Q. Do you know whether they were

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MANHATTAN REPORTING CORP.

1 Zoler

2 networked to a central file that was resident
3 within the marketing research department or to a
4 central file that networked other departments as
5 well?

6 A. Again, things changed with time, and
7 as the technology improved and the speed and
8 availability of these machines advanced we did
9 different things. The information that we
10 accessed I believe, again I never used, I never
11 used it, had to do with, primarily had to do with
12 sales data, market share data and I believe the
13 tracking study which was our large random digit
14 telephone sample that we did every year. And so
15 different members of the department or different
16 people in, say, brand management would be able to
17 see what Marlboro's share was in Omaha or how
18 Virginia Slims did in the midwest.

19 Q. Did any of the information that
20 management eventually had access to in the
21 computer system include information about the age
22 of smokers who were using those brands?

23 A. If -- for smokers 18 plus it did.

24 Q. Was there a formal policy concerning
25 the retention of electronic documents?

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MANHATTAN REPORTING CORP.

1 Zoler

2 A. I don't remember what it was.

3 Q. Do you recall if there was one?

4 A. No.

5 Q. Was there an internal classification
6 system for the documents produced by the
7 marketing research department whereby you can
8 restrict access?

9 A. Well, there was a -- I wouldn't say
10 it was a formal system. There was an informal
11 system and one brand manager, you know, the brand
12 manager of Virginia Slims would get information
13 on Virginia Slims and not necessarily get a
14 report that was on Marlboro.

15 Q. I'm thinking more broadly than that.
16 For instance, if you produced a report that you
17 considered sensitive, did you have any way or
18 method of ensuring that that report would be seen
19 only by the people who you determined needed to
20 see it?

21 A. Other than salary reviews or
22 performance appraisals or things like that, I
23 don't recall handling things that were especially
24 sensitive.

25 MR. PLATT: I don't have any further

MANHATTAN REPORTING CORP.

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1 Zoler

2 questions.

3 MR. HOWARD: I just have one
4 question.

5 EXAMINATION BY MR. HOWARD:

6 Q. The fact that you are being
7 reimbursed for your time and have been reimbursed
8 for your time during this deposition, has that
9 had any impact on your testimony today?

10 A. Absolutely none. I've left -- I left
11 Philip Morris eight, nine years ago, and I think
12 my personal reputation is worth a lot more than
13 any possible reimbursement.

14 MR. HOWARD: That's fine. I have no
15 further questions.

16 EXAMINATION BY MR. PLATT:

17 Q. I have one followup to that. I think
18 you said today you expect to be paid
19 approximately \$45,000?

20 A. No, four to five.

21 Q. Four to five?

22 A. Correct.

23 MR. PLATT: With that I don't have
24 any further questions.

25 MR. DOBBERTEN: Let's go off the

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1 Zoler

2 record.

3 THE VIDEOGRAPHER: It is 12:15, this
4 is the end of tape 2 of the deposition of Jon
5 Zoler. We are off the record.

6 (Discussion off the record.)

7 MR. HOWARD: The stipulation is that
8 this transcript is designated confidential
9 pursuant to the Washington confidentiality order
10 and that Mr. Zoler will have 30 days after
11 receipt of the transcript of this deposition to
12 review it for any errors, typographical errors or
13 what-not and to sign in front of any notary.

14 MR. PLATT: So stipulated.

15 (Time noted: 12:15 p.m.)

16
17 _____
18 JON N. ZOLER

19
20 Subscribed and sworn to before me
21 this _____ day of _____, 1997.

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MANHATTAN REPORTING CORP.

C E R T I F I C A T E

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, GAIL F. SCHORR, a Certified
Shorthand Reporter and Notary Public within and
for the State of New York, do hereby certify:

That JON N. ZOLER, the witness
whose deposition is hereinbefore set forth, was
duly sworn by me and that such deposition is a
true record of the testimony given by the
witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 22 day of May, 1997.


GAIL F. SCHORR, C.S.R., C.R.R.

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E X H I B I T S

DESCRIPTION

PAGE LINE

(Zoler Exhibit 1 for identification,
document Bates numbered 1000390803
through 1000390855.)..... 39 20

(Zoler Exhibit 2 for identification,
cover memo, by Mr. Zoler, to Mr. W.
Campbell and Mr. F. Resnik dated
September 16th, 1985, with attached
memorandum by Mr. Johnston, to
Mr. Zoler, subject: Trends and smoking
among high school seniors, dated August
15th, 1985, Bates numbered 2040282065
through 2040282092.)..... 57 5

(Zoler Exhibit 3 for identification,
memorandum, from Mr. Johnston to
Mr. Zoler, dated February 22nd, 1979,
Bates numbered WA 1000766888.)..... 68 25

(Zoler Exhibit 4 for identification,
memorandum, from N. Holbert, to
Mr. Zoler, dated November 10th, 1977,
Bates numbered 2041761868 through
2041761871.)..... 71 18

(Zoler Exhibit 5 for identification,
memorandum, from Mr. Johnston to
Mr. Zoler, with attachments, dated
January 19th, 1983, Bates numbered
2041761861 through 2041761867.)..... 73 23

(Zoler Exhibit 6 for identification,
memorandum, from Mr. Johnston, to
Mr. Zoler, subject: Smoking among high
school seniors, dated March 17, 1988,
Bates numbered 2042329558 through
2042329566.)..... 78 9

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MANHATTAN REPORTING CORP.

JON N. ZOLER

Keyword: (INSERT
Not Found.

Keyword: DIR

[8,12]

DIR Q. Do you recall any of the documents
that you reviewed during those meetings?

Keyword: REQ
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Keyword: RUL
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93

1 Zoler
2 record.

3 THE VIDEOGRAPHER: It is 12:15, this
4 is the end of tape 2 of the deposition of Jon
5 Zoler. We are off the record.

6 (Discussion off the record.)

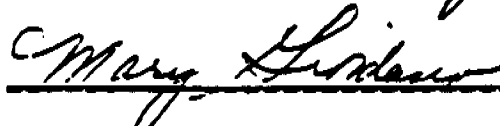
7 MR. HOWARD: The stipulation is that
8 this transcript is designated confidential
9 pursuant to the Washington confidentiality order
10 and that Mr. Zoler will have 30 days after
11 receipt of the transcript of this deposition to
12 review it for any errors, typographical errors or
13 what-not and to sign in front of any notary.

14 MR. PLATT: So stipulated.

15 (Time noted: 12:15 p.m.)

16
17 
18 JON N. ZOLER

19
20 Subscribed and sworn to before me
21 this 27th day of May, 1997.

22
23 
24

25 Mary Giordano
Notary Public of New Jersey
My Commission Expires August 22, 2001

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MANHATTAN REPORTING CORP.

ERRATA SHEET

**Deposition of Jon N. Zeler
May 20, 1997**

Page and Line

Correction

p. 12; line 16

change "\$30,000" to "\$60,000"

p. 60; line 18

change "that feed" to "to feed"

p. 83; lines 15-16

change "The cigarette industry in the market truly fragmented" to "The cigarette industry as a market is truly fragmented."

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